

**AGREEMENT
BETWEEN
THE CITY OF SAN JOSE AND THE CITY OF CAMPBELL
FOR THE CONSTRUCTION OF
THE SILICON VALLEY ITS – ENHANCEMENT PROJECT
AND OTHER IMPROVEMENTS**

THIS AGREEMENT ("AGREEMENT") is made and entered into this _____ day of _____ 2010, by and between the CITY OF SAN JOSE, a municipal corporation of the State of California (hereinafter "CITY") and the CITY OF CAMPBELL, a municipal corporation of the State of California (hereinafter "CAMPBELL").

WITNESSETH:

WHEREAS, the Silicon Valley Intelligent Transportation System (SV-ITS) – Enhancement Project (hereinafter "PROJECT") builds upon the existing Silicon Valley Smart Corridor Project with the installation of additional closed-circuit television cameras, communications cables, video and communications equipment in both the field and Transportation Management Centers, as well as the expansion of the existing fiber-optic cable network through multiple jurisdictions to enable effective management of non-recurring traffic congestion along Bascom Avenue and Los Gatos Boulevard; and

WHEREAS, the PROJECT includes construction elements within the CITY's, CAMPBELL's, the City of Santa Clara's, the Town of Los Gatos', the County of Santa Clara's, and Caltrans' rights-of-way; and

WHEREAS, a total of Four Million Five Hundred Thirty-Three Thousand Eight Hundred Seventy-Seven Dollars (\$4,533,877) in grant funds were received by CITY for the PROJECT from the following sources: Transportation Equity Act for the 21st Century Deployment (\$1,187,000), Transportation Equity Act for the 21st Century Demonstration (\$2,012,377), Congestion Mitigation and Air Quality (\$500,000), and Transportation Fund for Clean Air (\$834,500); and

WHEREAS, the PROJECT elements to be installed within CAMPBELL's right-of-way will be funded by the above grant sources; and

WHEREAS, CAMPBELL requests inclusion of certain additional improvements within its right-of-way which are not within the scope of the PROJECT but will be funded entirely by CAMPBELL and constructed by CITY as part of the PROJECT in a cooperative and cost-effective manner for the public's benefits (hereinafter, "IMPROVEMENTS"); and

WHEREAS, CITY is the lead agency administering both the design and the construction phases of the PROJECT and IMPROVEMENTS; and

WHEREAS, CAMPBELL and CITY (hereinafter collectively "PARTIES" or each individually "PARTY") desire to enter into this AGREEMENT to define the roles and responsibilities of each

PARTY with respect to the PROJECT and IMPROVEMENTS and detail the scope and reimbursement of the IMPROVEMENTS.

NOW, THEREFORE, in consideration of their mutual promises, covenants and agreements, and subject to the terms, conditions and provisions hereinafter set forth, the PARTIES hereby agree as follows:

1. **Scope of PROJECT Elements:** The PROJECT work is detailed in the approved Plans and Specifications for the PROJECT and IMPROVEMENTS (hereinafter, "PLANS AND SPECIFICATIONS"), incorporated herein by reference, and includes all work within CAMPBELL that is identified in the PLANS AND SPECIFICATIONS, except IMPROVEMENTS as those are detailed below.
2. **Scope of IMPROVEMENTS:** CAMPBELL acknowledges that the IMPROVEMENTS specified hereinafter are additional improvements that are not within the scope of the PROJECT but may be constructed as part of the PROJECT at the sole cost and expense of CAMPBELL. The scope of the IMPROVEMENTS is described as follows:

Table 1 - IMPROVEMENTS					
Replacement of Existing Controller Cabinet with "P" Type Cabinet and Installation of New Service Cabinet at Campbell Ave. & Bascom Ave. Intersection					
Item No.	Item Description	Approx. Qty.	Unit	Estimated Unit Price	Estimated Total
1	Remove and Salvage Existing Type "M" Traffic Signal Cabinet and Equipment.	1	EA	\$2,000.00	\$2,000.00
2	Remove "M" Cabinet Foundation and Install Sidewalk.	1	EA	\$2,500.00	\$2,500.00
3	Remove and Salvage Existing CCTV Cameras.	1	LS	\$2,000.00	\$2,000.00
4	Install Agency-Furnished Type "P" Cabinet and Foundation.	1	EA	\$4,500.00	\$4,500.00
5	Install Equipment from Existing Type "M" Cabinet Into New Type "P" Cabinet.	1	EA	\$2,000.00	\$2,000.00
6	Furnish and Install Type III-AF Service Pedestal and Foundation.	1	LS	\$4,000.00	\$4,000.00
7	Furnish and Install UPS Cabinet and Foundation	1	EA	\$6,000.00	\$6,000.00
8	Furnish and Install No. 5 Pull Box.	3	EA	\$650.00	\$1,950.00
9	Replace Existing Pull Box with No. 6 Pull Box and Retrofit Conduits in New Pull Box.	1	EA	\$800.00	\$800.00
10	Furnish and Install 53mm GRS Conduit By Open Trenching.	10	M	\$100.00	\$1,000.00
11	Furnish and Install #2 AWG Service Conductors.	45	M	\$6.00	\$270.00

T-15657.001/585579

2

Agreement Between the City of San José and City of Campbell for the Construction of the Silicon Valley ITS -- Enhancement Project and Other Improvements

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

12	Furnish and Install #6 AWG Service Conductors.	60	M	\$6.00	\$360.00
13	Furnish and Install #8 AWG Service Conductors.	60	M	\$4.00	\$240.00
14	Furnish and Install Traffic Conductors.	55	M	\$4.00	\$220.00
15	Furnish and Install 6-pair Copper SIC in Empty Conduit.	8	M	\$3.00	\$24.00
16	Furnish and Install Signal Circuit Breaker.	1	EA	\$100.00	\$100.00
Mobilization					\$2,000.00
Traffic Control					\$5,000.00
Subtotal					\$34,964.00
Change Order Contingency (15%)					\$5,245.00
TOTAL ENGINEER'S ESTIMATE FOR COST OF IMPROVEMENTS FUNDED BY CITY OF CAMPBELL					\$40,209.00

The IMPROVEMENTS listed above will be bid by CITY as "Add Alternative" or "Revocable" items to the PROJECT, at CITY's sole discretion. CAMPBELL shall be solely responsible for all costs and expenses associated with the IMPROVEMENTS as outlined in Section 7 of this Agreement.

3. **Design Administration:** CITY shall administer the design of the PROJECT and IMPROVEMENTS. The PLANS AND SPECIFICATIONS, and estimates for said PROJECT and the IMPROVEMENTS, shall be submitted by the CITY to CAMPBELL for review and approved by each PARTY.

4. **Construction Administration and Inspection:**

A. CITY shall administer the construction contract of the PROJECT and IMPROVEMENTS. CITY shall provide construction services such as construction administration, construction engineering, inspection, and coordination with CAMPBELL's inspection team for installation of PROJECT elements and IMPROVEMENT elements and restoration of existing facilities affected by the PROJECT or the IMPROVEMENTS in CAMPBELL during and through the completion of the construction of said PROJECT and IMPROVEMENTS.

B. CAMPBELL shall provide inspection services when necessary, as mutually determined by both PARTIES, to support the CITY's inspection effort for construction of the PROJECT and the IMPROVEMENTS in CAMPBELL during and through the completion of the construction of said PROJECT and IMPROVEMENTS. CAMPBELL shall also provide any inspection services related to permits issued by CAMPBELL for the PROJECT and IMPROVEMENTS.

C. Each PARTY shall perform their inspection and acceptance of work in accordance with the approved PLANS AND SPECIFICATIONS and in a cooperative and diligent manner. The PARTIES shall utilize the "Draft Silicon-Valley ITS Construction Communication and Management Policies and Procedures," dated July 28, 2002, attached hereto as "Exhibit A"

and incorporated herein, as a general guideline for construction of the PROJECT and IMPROVEMENTS and acceptance of the work.

5. **PROJECT Manager:** The designated manager for CAMPBELL for the duration of the construction of the PROJECT and IMPROVEMENTS is Mr. Matthew Jue at (408) 866-2154. CAMPBELL's manager shall review, approve and accept technical and professional work within the scope of this AGREEMENT and shall serve as the principal point of contact with CITY. The designated manager for the CITY, or "Lead Design Agency" project manager as defined in "Exhibit A," for the duration of the construction of the PROJECT and IMPROVEMENTS is Mr. Kenneth Jung at (408) 975-3262. CITY's designated manager shall have all the necessary authority to review, approve and accept technical and professional work within the scope of the AGREEMENT and shall serve as the principal point of contact with CAMPBELL. At any time during the term of this AGREEMENT, if either party designates a manager different than listed herein, the designating PARTY shall notify the other PARTY in writing within five (5) working days.
6. **Permits:** CAMPBELL agrees to issue, at no cost to the CITY and City's Contractor, all necessary encroachment permits and inspections required for the construction of said PROJECT and IMPROVEMENTS within CAMPBELL's jurisdiction, if any, in accordance with the PLANS AND SPECIFICATIONS and subject to the normal business practices of CAMPBELL.
7. **Payment of Costs:**
 - A. If bids received for the PROJECT indicate that the total construction cost of the IMPROVEMENTS does not exceed the "TOTAL ENGINEER'S ESTIMATE FOR COST OF IMPROVEMENTS FUNDED BY CITY OF CAMPBELL" detailed in Section 2 of this AGREEMENT, CITY shall forward an invoice to CAMPBELL upon construction contract award for the cost of IMPROVEMENTS based on actual contract prices. CAMPBELL shall pay entire invoice within sixty (60) calendar days of receipt. This invoice shall include the costs for Construction, Design, Administration, Management, and Change Order Contingency directly related to the IMPROVEMENTS.
 - B. If bids received for the PROJECT indicate that the total construction cost of the IMPROVEMENTS exceeds the Engineer's estimated total construction cost for these IMPROVEMENTS as indicated hereinabove, CITY shall notify CAMPBELL and provide a copy of the apparent lowest bid. Within fourteen (14) calendar days of receiving such notice, CAMPBELL shall respond in writing to either 1) reject the total cost of IMPROVEMENTS, or 2) proceed with construction of the IMPROVEMENTS with an adjustment to the quantities of each line item detailed in Table 1 above so that the total actual cost of the IMPROVEMENTS does not exceed the Engineer's Estimate indicated in Section 2 of this AGREEMENT.
 - a. If CAMPBELL rejects the total cost of IMPROVEMENTS, CITY will not award the IMPROVEMENTS as a part of the construction contract for the PROJECT or revoke the IMPROVEMENTS from the construction contract. CAMPBELL shall still be responsible for reimbursement to the CITY of the incurred "Design Costs" and "Administrative Costs to Process Cost-Sharing Agreement" as detailed in Section 2

of this AGREEMENT. CAMPBELL agrees to pay CITY for any such costs within sixty (60) days of receiving notice of the apparent lowest bid from CITY.

- b. If CAMPBELL desires to proceed with construction of the IMPROVEMENTS with an adjustment to the quantities of each line item detailed in Table 1 above so that the total actual cost of the IMPROVEMENTS does not exceed the Engineer's Estimate indicated in Section 2, CAMPBELL shall provide proposed quantity adjustments in writing to the CITY within fourteen (14) calendar days of receiving a copy of the apparent lowest bid. CITY shall proceed with construction of the quantity-adjusted IMPROVEMENTS list by awarding those items as a part of the construction contract or revoke the items that are not part of the quantity-adjusted IMPROVEMENTS list, and forward an invoice for the revised items to CAMPBELL for reimbursement as detailed in Section 7(A) above.
- c. If CAMPBELL does not provide written response within fourteen (14) calendar days after receiving a copy of the apparent lowest bid, CITY will not award the IMPROVEMENTS as part of the construction contract for the PROJECT or will revoke the IMPROVEMENTS from the construction contract. CAMPBELL shall still be responsible for reimbursement to the CITY of the incurred "Design Costs" and "Administrative Costs to Process Cost-Sharing Agreement" as detailed in Section 2 of this AGREEMENT. CAMPBELL agrees to pay CITY for any such costs within sixty (60) days of receiving notice of the apparent lowest bid from CITY.

C. If during construction of the IMPROVEMENTS, the CITY receives Contract Change Order (CCO) requests due to unforeseeable conditions that cause the total cost of work directly related to IMPROVEMENTS to exceed the CAMPBELL approved total cost of IMPROVEMENTS as determined by the provisions stated in Section 7(A) and 7(B) above, CITY shall notify CAMPBELL in writing within forty-eight (48) hours of receiving such CCO requests. After consulting with CAMPBELL, CITY shall negotiate a CCO with the CITY's contractor consistent with direction provided by CAMPBELL. The CITY shall notify CAMPBELL of the additional cost for approval. If CAMPBELL approves the additional cost within seven (7) calendar days of receiving notice of the additional cost, CAMPBELL shall provide payment to CITY for the full amount of the additional cost within thirty (30) days of receiving notice from CITY of the additional cost. If CAMPBELL does not approve the additional cost within seven (7) calendar days of receiving notice of the additional cost, CITY shall not approve the CCO and shall direct its contractor to cease further work on the IMPROVEMENTS. CITY shall direct its contractor to return both the public right of way and the incomplete IMPROVEMENTS to a safe and secure condition, including restoration of the pavement surface to the same condition as existed prior to the start of construction. CAMPBELL shall be solely responsible for the costs of returning both the public right of way and the incomplete IMPROVEMENTS to a safe and secure condition. CITY is not obligated to proceed with any CCO work related to IMPROVEMENTS that CAMPBELL has not approved and agreed to fund.

8. **Contract Change Orders:** All requests for CCOs that arise due to unforeseeable circumstances encountered during construction related to both the PROJECT and the IMPROVEMENTS shall be forwarded to CAMPBELL for review and approval pursuant to the process detailed in

T-15657.001/585579

5

Agreement Between the City of San José and City of Campbell for the Construction of the Silicon Valley ITS – Enhancement Project and Other Improvements

"Exhibit A". The "Change Order Contingency" amount indicated in Table 1 in Section 2 of this AGREEMENT shall be used to pay for CCOs directly-related to IMPROVEMENTS. CAMPBELL's individual or cumulative obligation to pay for any CCOs related to the IMPROVEMENTS shall not exceed the amount set forth under "Change Order Contingency" in Table 1 of Section 2 of this AGREEMENT. CCOs related to the PROJECT work shall be funded by the grant sources.

9. **Final Accounting:** Upon completion of the PROJECT work and the IMPROVEMENTS, CITY shall pay to the CITY's Contractor the final construction costs of said PROJECT and IMPROVEMENTS. Upon completion and acceptance of PROJECT and IMPROVEMENTS by CITY, CITY shall forward to CAMPBELL, within thirty calendar (30) days, a final accounting of all costs related to the IMPROVEMENTS and an invoice for funds due CITY for the IMPROVEMENTS, if any. This final accounting shall list the costs of construction as set forth in Section 2 of this AGREEMENT and additional approved change orders as outlined in Section 8 of this AGREEMENT. Any unused funds deposited by CAMPBELL for the IMPROVEMENTS will be returned to CAMPBELL, without interest, within sixty (60) calendar days of completion of the final accounting.

10. **Operations and Maintenance:**

- A. During construction of the PROJECT and IMPROVEMENTS, each PARTY shall continue to operate and maintain the existing facilities within its own jurisdiction as occurred prior to the implementation of said PROJECT and IMPROVEMENTS.
- B. Upon completion and acceptance of the PROJECT, each PARTY shall own, operate, and maintain the PROJECT elements within its own jurisdiction and comply with the intent of the SV-ITS Program as follows:
- a. Each PARTY agrees that elements installed by the PROJECT are for the sole purpose of improving the efficiency and effectiveness of the regional transportation management system installed by the SV-ITS Program.
 - b. Use of all PROJECT elements must conform to the requirements of the grant funding for the PROJECT.
 - c. The PROJECT elements shall remain at their installed locations as detailed in the PLANS AND SPECIFICATIONS.
 - d. Each agency shall fully maintain the PROJECT elements within its own jurisdiction.
 - e. Any PROJECT elements, including fiber optic cable strands that are not assigned to a specific communications purpose in the PLANS AND SPECIFICATIONS, shall remain available for future SV-ITS Program use, or other transportation improvement purpose as approved in writing by both PARTIES.
 - f. Any proposed modification of PROJECT elements or their original, intended use shall require written approval from both PARTIES.
- C. Upon completion and acceptance of the IMPROVEMENTS, CAMPBELL shall fully own, operate, and maintain the IMPROVEMENTS.

11. **Insurance:** In its construction contract with the City's Contractor for the PROJECT and IMPROVEMENTS, CITY shall require the City's Contractor to comply with Section 7-1.122,

Insurance Requirements, of the City of Campbell Standard Specifications and Details for Public Works construction (July 1994) attached hereto as "Exhibit B". CITY shall also require the City's Contractor defend, hold harmless, and indemnify CAMPBELL, its officials, employees, and agents; to provide bodily injury insurance, property damage insurance, contractual liability, worker compensation and auto coverages with such coverages to be primary and non-contributing; and to name CAMPBELL, its officials, employees, and agents as additional insureds. CAMPBELL shall be provided with a copy of the City's Contractor's insurance certificates and endorsements prior to commencement of construction of PROJECT and IMPROVEMENTS.

12. Hold Harmless / Indemnification: In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the PARTIES pursuant to Government Code Section 895.6, the PARTIES agree that all losses or liabilities incurred by either Party shall not be shared pro rata. Instead, the PARTIES agree that, pursuant to Government Code Section 895.4, each PARTY hereto shall fully defend, indemnify and hold harmless the other PARTY, its officers, council members, employees, and agents, from any claim, loss or liability arising from or as a result of the death of any person or any accident, injury, loss or damage caused to any person or property of any person occurring by reason of the willful or negligent acts (active or passive) or omissions of the indemnifying PARTY, its officers, employees or agents, arising out of or relating in any way to the indemnifying PARTY's performance of this AGREEMENT. The CITY's acceptance of the PROJECT and IMPROVEMENTS and CAMPBELL's payment of any sum due hereunder shall not operate as a waiver of this right of indemnification. The PARTIES' obligation under this provision shall survive the expiration or sooner termination of this AGREEMENT.

13. Termination:

- A. The PARTIES can terminate this AGREEMENT at any time by mutual, written agreement. Unless the PARTIES agree otherwise, the termination shall become effective thirty (30) calendar days after the written agreement to mutually terminate.
- B. If either PARTY fails to perform any of its material obligations under this AGREEMENT, the PARTY failing to perform is deemed to be in breach and in default of this AGREEMENT. In addition to all other remedies provided by law; the non-breaching PARTY may terminate this AGREEMENT upon seven (7) calendar days advance written notice (hereinafter, "NOTICE PERIOD") to the defaulting PARTY and provide the defaulting PARTY with either the opportunity to cure the specified breach or, in those instances where the specified breach cannot reasonably be cured within the NOTICE PERIOD, with the opportunity to commence to cure the specified breach within the NOTICE PERIOD. In the event the defaulting PARTY fails to cure or to commence to cure the specified breach within the NOTICE PERIOD, this AGREEMENT shall be immediately terminated.
- C. The CITY's Director of Transportation is empowered to terminate this AGREEMENT on behalf of the CITY.
- D. If this AGREEMENT is terminated, within thirty (30) calendar days of termination, CITY shall deduct all actual costs related to IMPROVEMENTS, including but not limited to

accrued design and construction, authorized by CAMPBELL and incurred by CITY up to the date of termination, in an amount not to exceed the "TOTAL IMPROVEMENTS COST FUNDED BY CAMPBELL" specified in Table I of Section 2 of this AGREEMENT plus any approved change orders exceeding the total "Change Order Contingency" amount indicated in Table 1 of Section 2 of this AGREEMENT and any amount to restore the facilities to previous condition. Any remaining balance shall be returned to CAMPBELL.

14. **Entire Agreement:** This AGREEMENT contains the entire agreement between the PARTIES relating to the PROJECT and IMPROVEMENTS. Any prior agreements, promises, negotiations, or representations not expressly set forth in this AGREEMENT are of no force or effect.
15. **Governing Law:** This AGREEMENT shall be governed and construed in accordance with the laws of the State of California. In the event that suit is brought by either PARTY, the PARTIES agree that trial of such action shall be exclusively vested in a state court in the County of Santa Clara or, if federal jurisdiction is appropriate, in the United States District Court for the Northern District of California, San Jose, California.
16. **Acquisition of Property:** It is understood and agreed that the PROJECT and IMPROVEMENTS as described herein are totally within existing rights-of-way and no property acquisition or dedication is necessary.
17. **Terms of Agreement:** The term of this AGREEMENT shall commence upon execution of the AGREEMENT by both PARTIES and terminate upon PROJECT and IMPROVEMENTS acceptance and final payments. Warranty period shall be one (1) year from the acceptance date as specified in the City of San José Standard Specifications, Section 7-1.23.
18. **Severability:** Should any part of this AGREEMENT be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the validity of the remainder of this AGREEMENT which shall continue in full force and effect; provided that the remainder of the AGREEMENT, absent the excised portion, be reasonably interpreted to give effect to the intentions of the PARTIES.
19. **Non Waiver:** A failure by either PARTY to require full compliance with any requirement or condition of this AGREEMENT shall not be deemed to be waiver of that requirement or condition or of any subsequent breach of the same or any other requirement or condition. Acceptance of performance or fulfillment of a requirement or a condition by the other PARTY, including CITY's payment to its CONTRACTOR, shall not be deemed to be a waiver of any preceding breach, regardless of knowledge or such preceding breach at the time of acceptance.

20. Notices: All notices required to be given hereunder, or which either PARTY may wish to give, shall be in writing and shall be served either by personal delivery or by mail, postage prepaid, addressed as follows, or to such other place as either PARTY may designate by written notice:

Mr. Robert Kass
Director of Public Works Department
City of Campbell
70 North First Street
Campbell, CA 95008
Attn: Matthew Jue

Mr. Hans F. Larsen
Acting Director of Department of Transportation
City of San José
200 East Santa Clara Street, 8th Floor Tower
San José, CA 95113
Attn: Lily Lim-Tsao


Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the United States mail.

WITNESS THE EXECUTION HEREOF the day and year first hereinabove set forth.

“CITY”

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal corporation




JOHNNY V. PHAN
Deputy City Attorney
Date: 2/10/10

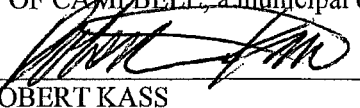
By _____
LEE PRICE, MMC
City Clerk
Date:

“CAMPBELL”

APPROVED AS TO FORM AND LEGALITY: CITY OF CAMPBELL, a municipal corporation



WILLIAM SELIGMANN
City Attorney
Date:

By 

ROBERT KASS
Director of Public Works Department
Date :